

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

VINCENT L. AMMONS,

Plaintiff,

v.

BRUCE GERLINGER, RENEE
ANDERSON, BECKY DRESSLER
and RITA ERICSON,

Defendants.

MEMORANDUM

06-cv-20-bbc

VINCENT L. AMMONS,

Plaintiff,

v.

DR. JOAN M. HANNULA,
JEAN E. VOEKS,
and DR. KENNETH ADLER,

Defendants.

08-cv-608-bbc

Plaintiff Vincent Ammons, a prisoner at the Stanley Correctional Institution, has filed two appeals in his case numbered 06-cv-20-bbc. In an October 27, 2008 opinion, the United States Court of Appeals for the Seventh Circuit ruled that plaintiff owed filing fees of \$455 for each appeal. The court of appeals also sanctioned plaintiff for deceptively taking advantage of this court's error in allowing him to proceed with his first appeal without prepayment of the filing fee. The court issued a *Mack* order directing clerks of court to return unfiled any papers

that plaintiff submits, other than any collateral attacks under 28 U.S.C. 2254 on his imprisonment, until he pays off the balance of unpaid fees in previous cases. *Ammons v. Gerlinger*, ___ F.3d ___ (7th Cir. 2008) (per curiam) (citing *Newlin v. Helman*, 123 F.3d 429, 436-37 (7th Cir. 1997); *Support Sys. Int'l, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995)).

While the court of appeals was considering plaintiff's appeals in case no. 06-cv-20-bbc, plaintiff filed a new complaint in this court against Department of Corrections staff in case no. 08-cv-608-bbc. In a November 5, 2008 order, this court concluded that the *Mack* order issued by the court of appeals against plaintiff did not preclude the court from screening his complaint because he was alleging he was in imminent danger of serious physical injury. Ultimately, this court granted plaintiff leave to proceed *in forma pauperis* on several of his claims and denied him leave to proceed on another.

Now plaintiff has submitted a series of letters discussing two issues: (1) the apparent error of the court of appeals in stating in its October 27, 2008 opinion that plaintiff has only remitted \$42.83 toward payment of his appellate filing fees totaling \$910; and (2) whether plaintiff wishes to withdraw his complaint in 08-cv-608-bbc. I address each issue in turn.

First, plaintiff notes that in its October 27, 2008 opinion, the court of appeals stated that he has remitted only \$42.83 toward payment of his appellate filing fees in case no. 06-cv-20-bbc totaling \$910, and therefore he continues to owe \$867.17. Plaintiff states that this is "drastically incorrect," "[t]hey assumed I was a deadbeat" and "[t]his paltry amount was used as a factor in the Court of Appeals implementing a [*Mack*] order against me." He states he has actually paid \$166.54, and attaches a summary of the payments that have been made to the clerk of this district court. Finally he asks that this court investigate this discrepancy and then

provide both him and the Court of Appeals with the updated balance. It appears plaintiff would like the updated balance in order to have his family pay off the remaining amount, and perhaps to have the court of appeals rethink its issuance of the *Mack* order. While I am highly skeptical that the court of appeals would rescind its *Mack* order over a \$123.71 discrepancy, I have examined plaintiff's financial records with this court in order to clear up any confusion regarding the balance of his account.

This court's records indicate that, as plaintiff has suggested, he has remitted a total of \$166.54 toward payment of his appellate filing fees. This means that the current balance of plaintiff's account in case no. 06-cv-20-bbc is \$743.46. In addition to having this memorandum sent to the parties in plaintiff's cases, I will have a copy sent to the court of appeals so that it is aware of this updated figure.

Next, I consider whether plaintiff wishes to have his complaint in case no. 08-cv-608-bbc withdrawn. On November 10, 2008, this court received a letter from plaintiff dated November 5, 2008, noting that a *Mack* order had been issued against him and asking that the court return his complaint to him so that he is not "further accused of deception and/or misconduct." This letter crossed in the mail with this court's November 5, 2008 order granting plaintiff leave to proceed *in forma pauperis* on several of his claims in spite of the *Mack* order. After receiving the court's order, plaintiff wrote back asking to rescind his request for the court to return his complaint. Therefore, it is clear plaintiff wishes to proceed with his case, and this memorandum

will clarify to the parties that the case will proceed as discussed in this court's November 5, 2008 order.

Entered this 19th day of November, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge